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IN THE

Supreme Court

OF THE

United States

OCTOBER TERM, 1967

No. 275

DONALD G. WILLIS,

Petitioner,

vs.

THOMAS P. OBRIEN, Judge
of the Intermediate Court
of Ohio County, West Virginia

Respondent.

Petition for Rehearing for a Writ of Certiorari
to the Supreme Court of Appeals of
the State of West Virginia

Counsel for Petitioner:
Pinsky, Mahan, Barnes & Watson
736 Charles Street
Wellsburg, West Virginia

McCamic & McCamic
56 - 14th Street
Wheeling, West Virginia

THE BOYD PRESS INC. WHEELING, W. VA.

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To the Honorables the Justices of the of the United States Supreme Court

PETITION FOR REHEARING

Petitioner, Donald G. Willis, presents his petition for a rehearing of the above-entitled cause, and, in support thereof, respectfully shows:

GROUNDS FOR REHEARING

On June 12, 1967, this Court decided the case of *Jackie Washington* v. *State of Texas*, 87 S. Ct. 1920, in which it was decided that the 6th Amendment guarantee of the right of an accused to compulsory process for obtaining witnesses in his favor applied to the states because of the due process clause of the Fourteenth Amendment.

This decision is a continuation of the Court's step by step pronouncements that the guarantees of the 6th Amendment are so fundamentel and essential to a fair trial that they are incorporated in the 14th Amendment.

These pronouncements are as follows:

1.) The right to a speedy trial. *Klopfer* v. *North Carolina*, 386 U.S. 213 (1967)

2.) The right to a public trial. *In re Oliver*, 333 U.S. 257 (1948)

3.) The right to be confronted with the witnesses against him. *Pointer* v. *Texas*, 380 U.S. 400 (1965)

4.) The right to have the assistance of counsel for his defense. *Gideon* v. *Wainwright*, 372 U.S. 335 (1963)

The question raised by the case at hand stands on no lesser footing than the other 6th Amendment rights previously held applicable to the states, that being, whether the 6th Amendment guarantee that the accused shall enjoy the right to trial by an impartial jury in "the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law" is a right so fundamental and essential to a fair trial that the right is also applicable to the states under the due process clause of the Fourteenth Amendment.

This Court previously recognized in *U.S.* v. *Guiteau*, 1 Mackey 498 (1882) that the rights of a criminal defendent with respect to the place of trial are fundamental rights grounded in the history and tradition of the common law. The Court has not yet held that this right is among those 6th Amendment rights "so fundamental and essential to a fair trial that they are incorporated in the 14th Amendment". However, petitioner submits the Court would so decide if the issue raised by the case at hand were accepted for decision. No more *persuasive* reasoning could be presented than the words of Judge Greene in *State* v. *Lowe*, 21 W. Va. 782 (1893) as follows:

> "The object of the constitutional provision is to protect the accused against a spirit of oppression and tyranny on the part of the government, and against a spirit of violence and vindictiveness on the part of the people; and also to secure the accused from being dragged to a trial at a distant part of the State away from his friends, witnesses and neighborhood, and thus be subjected to the verdict of mere strangers, who may feel no sympathy, or who cherish against him animosity or prejudice, and also to protect the accused, from injustice arising from his inability to procure proper witnesses, and to save him from great expense. See State of Minnesota v. Robinson, 14 Minn. 454 and 2 Story on Con. sections 1780-81 . . . ."

CONCLUSION

For the foregoing reasons it is respectfully urged that this petition for a rehearing be granted, and that, upon further consideration, the judgment of the Supreme Court of Appeals of the State of West Virginia be reversed.

Jeremy C. McCamic
Of Counsel for Petitioner

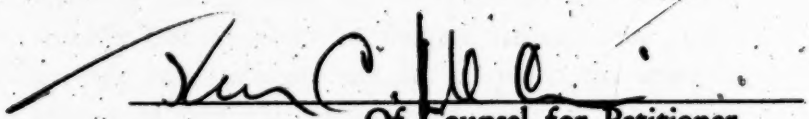
Counsel for Petitioner:

Pinsky, Mahan, Barnes & Watson
736 Charles Street
Wellsburg, West Virginia

McCamic & McCamic
56 - 14th Street
Wheeling, West Virginia

CERTIFICATE OF COUNSEL

I, Jeremy C. McCamic, of counsel for the above-named petitioner, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.



Of Counsel for Petitioner